Hoi Yau Hing Seafood Industries Sdn Bhd v Chan Pak Sai & Anor

HIGH COURT (KUALA LUMPUR) — SUIT NO S2-22-766 OF 1998
KAMALANATHAN RATNAM J
15 JULY 1999

Civil Procedure *— Injunction — Application for — Injunction to restrain defendants from removing or disposing assets and from disrupting plaintiff's business — Whether should be granted*

The plaintiff obtained an ex parte injuction against the first and second defendants, who was a director and general manager of the plaintiff respectively, restraining them from removing the assets and items owned and used by the plaintiff thus disrupting the plaintiff's business. The defendants successfully obtained an ex parte stay of the injunction and proceeded further disrupt the plaintiff's business by preventing the plaintiff from gaining access to the place of business and misrepresenting and confusing the plaintiff's customers with regard to the collection of money. This was the the plaintiff's inter partes application for a restraining injunction against both defendants.

Held, granting the plaintiff the restraining injunction:

The fact that the defendants had begun removing the plaintiff's assets and other items used by the plaintiff in its business as of 20 November 1998 is clearly borne out by the fact that the defendants were able to prepare the accounting statements as at 28 November 1998. The accounting statements exhibited and the letterheads of the plaintiff used by the defendants to prepare the accounts as at 28 November 1998 go contrary to the avowed denials of the defendants of being in possession of the plaintiff's letterheads. A further examination of the accounting statements prepared by the first defendant shows that the defendants were in fact in possession of cheques received from the plaintiff's customers. As such the plaintiff was entitled to the restraining orders (see p 829E–F, I).

[Bahasa Malaysia summary

Defendan telah memperoleh satu injunksi ex parte terhadap defendan pertama dan kedua, yang masing-masing merupakan pengarah dan pengurus besar plaintif, menyekat mereka daripada mengalihkan aset-aset dan barang-barang yang dimiliki dan digunakan oleh plaintif yang demikian telah mengganggu perniagaan plaintif. Defendan-defendan telah berjaya memperoleh satu penggantungan ex parte terhadap injunksi itu dan seterusnya mengganggu perniagaan plaintif dengan menghalang plaintif daripada memasuki tempat perniagaan dan membuat salah nyataan dan mengelirukan pelanggan-pelanggan

plaintif berhubung dengan pengutipan wang. Ini merupakan permohonan inter partes pihak plaintif untuk satu injunksi sekatan terhadap kedua-dua defendan.

Diputuskan, memberikan plaintif injunksi sekatan tersebut:

Fakta bahawa defendan-defendan telah mula mengalihkan aset-aset dan barang-barang lain plaintif yang digunakan oleh plaintif di dalam perniagaannya setakat 20 November 1998 adalah dengan jelas dibuktikan oleh fakta bahawa defendan-defendan tersebut mampu menyediakan penyata-penyata perakaunan yang diekshibitkan dan surat kepala-surat kepala ('letterhead') plaintif telah digunakan oleh defendan-defendan untuk menyediakan akaun setakat 28 November 1998 bertentangan dengan penafian-penafian terang-terangan defendan-defendan bahawa ia memiliki surat kepala-surat kepala plaintif tersebut. Satu pemeriksaan lanjutan penyata-penyata perakaunan yang disediakan oleh defendan pertama menunjukkan bahawa defendan-defendan sememangnya memiliki cek-cek yang diterima daripada pelanggan-pelanggan plaintif. Oleh demikian plaintif berhak kepada perintah-perintah sekatan itu (lihat ms 809E–F, I).]

Notes

For cases on injunction to restrain, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 2002–2030.

Albert Toong (*Albert Toong & Associates*) for the plaintiff.

Jasbeer Singh (*George Varghese* with him) (*Jasbeer Rajpal & Partners*) for the defendants.

Cur Adv Vult

Kamalanathan Ratnam J:

Facts

The plaintiff is in the business of processing and marketing seafood products and operated from rented premised located at Nos 34–38, Jalan PS 1/7, Bandar Pinggiran Subang 1, Section U5, 40150 Shah Alam, Selangor Darul Ehsan ('the plaintiff's place of business').

The first defendant is a shareholder and director of the plaintiff and at all material times claims to have been appointed the Managing Director, whilst the plaintiff claims otherwise. The first defendant is also the majority owner of a company named Willy Equipment Manufacturing Sdn Bhd.

The second defendant was employed as the General Manager of the plaintiff and prior to his employment carried on a similar business through his companies, Hoi Yau Hing Marine Products Sdn Bhd and Hoi Yau Hing

Marketing Sdn Bhd until his employment with the plaintiff. Pursuant to a contract of employment entered into with the plaintiff and the other shareholders, the second defendant was employed to render technical assistance to the plaintiff for its business operations.

Case for the plaintiff

The plaintiff commenced operations in the month of July 1998 with plans to ultimately take over the assets of Hoi Yau Hing Marine Products Sdn Bhd which basically comprised of three coldrooms, motor vehicles, and other equipment used for processing seafood products and also to take over their employees as well. To such end, the plaintiff started paying for the monthly instalments and other payments. Apart from those aforesaid assets, the plaintiff owns the seafood stocks which stood at a value of RM459,969.41 in stock prior to the date of their removal together with records, documents, accounting documents and cheque books ('the assets and items owned and used by the plaintiff')

There are three other directors and shareholders in the plaintiff, namely one Oh Kim Leong, Tan Boon Hock, and Tang Siew Fook with the latter being the Executive Director. On 20 November 1998 the other directors and shareholders received information and discovered that the assets and other items used by the plaintiff in its business operations were in the process of being moved out from the plaintiff's place of business. The plaintiff then ascertained that the assets and other items owned and used by the plaintiff were removed and taken away and also that all the employees except for one marketing executive, absorbed by the defendants and moved to a location just one road away at Nos 28–30, Jalan PS 1/6, Bandar Pinggiran Subang 1, Section U5, 40150 Shah Alam ('the defendants' place of business'). Subsequent to this, the first defendant approached and met with Oh Kim Leong, one of the directors, with a view towards purchasing the shares of the other shareholders. The negotiations failed. The plaintiff subsequently discovered during the course of the application for the injunction that the defendants had used two companies, namely, Hoi Yau Hing Marine Products Sdn Bhd and Hoi Yau Hing Marketing Sdn Bhd and possibly others as well, to disrupt the plaintiff's business, compete with and to canvass the plaintiff's clients' business, and at the same time the entire stocks belonging to the plaintiff which was valued at RM459,969.41 prior to the date of removal had disappeared with the sale of a substantial portion thereof to a supplier and the balance having been 'written-off' and in response to this, the plaintiff contends that the sale of the substantial portion is and was a fraudulent transaction concocted by the defendants for their own purposes.

As a result of the 'hijacking' of the goods (as the plaintiff called it), the employees, and the telephone and fax lines, and the wrongful withholding of cheques and monies received and taken from the plaintiff's customers, the plaintiff contends that it is in no position to carry on its operations as the second defendant was also responsible for all technical aspects of the

operations. The plaintiff then applied for and obtained an ex parte injunction on 15 December 1998 and served the same on the defendants on 18 December 1998, but the defendants refused to obey and comply with the same. The defendants then applied and obtained an ex parte order for stay of execution of the injunction on 24 December 1998 and which remains effective to date. Having obtained the stay of execution, the defendants proceeded to do and cause further irreparable damage by disrupting the plaintiff's business and continuing to prevent the plaintiff from gaining access to the plaintiff's place of business and misrepresenting and confusing the plaintiff's customers with regard to collecting monies and cheques from them.

Finally, the defendants replaced the padlocks with the previously used padlocks and for which the plaintiff still had the keys, and access was thus regained by the plaintiff. The plaintiff then discovered that the plaintiff's place of business had been vandalised and that some of the accounting documents and other records had been 'returned'. This re-admission into the plaintiff's place of business was prompted by a letter from the defendants' solicitors that all the assets and items were in the plaintiff's place of business.

Findings of the court

The plaintiff contends that upon returning to the plaintiff's place of business on 20 November 1998 it was discovered that the assets owned by and used by the plaintiff were in the process of being moved out from the premises. Although the ex parte order had been served on the defendants on 18 December 1998, the defendants still failed, refused, and/or neglected to comply with the said order and the defendants' solicitors have even admitted to such disobedience by their letter dated 23 December 1998 wherein they indicated their stand as follows:

> As regards paras (5), (6) and (7), our instructions are to inform you that our clients are prepared to comply with the directions of the court as regards the disposal of the property belonging to Hoi Yau Hing Seafood Industries Sdn Bhd after the honourable court has had the opportunity to hear our client's case and has made a decision with full facts before it.

It is clear from the above that after service of the injunction and prior to the filing of the defence and counterclaim, the defendants had already admitted through their solicitors that they were in possession of the assets and items taken from the plaintiff's place of business. The defendants have sought to answer this by saying that what was meant by their solicitors' letter was not that the assets and items were in their possession but that they would abide with any court order concerning such assets and items. This explanation only serves to cover their mistake. It is plain that if the defendants are not in possession of any items as claimed, then there is no point in intimating to the court that they will abide by any court order.

It is also clear that having obtained the order for stay of execution, the defendants then filed a defence and counterclaim to the effect that the

defendants had not taken, and were not in possession of, the plaintiff's assets and items and if at all, Hoi Yau Hing Marine Products Sdn Bhd had taken back the assets and items which belonged to them.

If this indeed was the case then I fail to understand why, as soon as the ex parte order was served on the defendants on 18 December 1998 they did not forthwith inform the plaintiff to deal directly with Hoi Yau Hing Marine Products Sdn Bhd. The very fact that their letter dated 23 December 1998 indicated that they would comply with the directions of the court after the court had heard their side of the story and the defendants' abject failure to indicate in that letter itself to deal with Hoi Yau Hing Marine Products Sdn Bhd, clearly shows out the defendants' true character. Further counsel for the defendants, Mr Jasbeer Singh, came running to my court very late in the day on 24 December 1998 to ask for a stay of the ex parte order granting an injunction and which ex parte order was by consent extended on the day fixed for the hearing of the inter partes application for injunction. I had upon the plea of Mr Jasbeer Singh and in the light of a strongly worded letter from the plaintiff's solicitors threatening committal proceedings if there was non-compliance of the ex parte order, granted the stay until the hearing of this inter partes application against both defendants.

The defendants categorically deny having removed any items from the plaintiff's place of business. But certain documents prepared by the defendants tell otherwise. The plaintiff contends that the defendants had begun removing the plaintiff's assets and other items used by the plaintiff in its business as of 20 November 1998. This is clearly borne out by the fact that the defendants were able to prepare the accounting statements *as at 28 November 1998*. The accounting statements exhibited and the letterheads of the plaintiff used by the defendants to prepare the accounts as at 28 November 1998 go contrary to the avowed denials of the defendants of being in possession of the plaintiff's letterheads. A further examination of the accounting statements prepared by the first defendant shows that the defendants were in fact in possession of cheques received from the plaintiff's customers as details of the cheques received from customers have been documented in support of the accounting statements. Further the said accounts show that as at 28 November 1998 a petty cash balance of RM1,189.84 was with the defendants. How did they get possession of this?

The plaintiff has also exhibited photographs showing a lorry owned by Willy Equipment Manufacturing Industries Sdn Bhd, a company owned by the first defendant, stationary just outside the plaintiff's place of business on the day of the alleged removal of the plaintiff's assets and other items used by the plaintiff in its business. Whilst the defendants have argued that the photographs do not show actual loading of the said items and assets, the defendants have significantly failed to explain what that lorry was doing on that day just outside the plaintiff's place of business.

I am more than satisfied that the plaintiff is entitled to the following orders, namely, that:

(1) The first defendant and the second defendant be restrained and an injunction be granted restraining them until the final disposal of this

action and/or further order of this court, whether by themselves or by their servants or agents or any of them or otherwise howsoever from removing, using, disposing, selling, or otherwise dealing with the assets of the first defendant and the second defendant from the jurisdiction of this court, including but not limited to:

(i) The shares owned by the first defendant in the company named as Willy Equipment Manufacturing Industries Sdn Bhd;

(ii) The shares owned by the second defendant in the company Hoi Yau Hing Marine Products Sdn Bhd;

(iii) The shares owned by the first defendant in Hoi Yau Hing Seafood Industries Sdn Bhd; and

(iv) The property owned by the second defendant in Muar and/or Melaka.

Save in so far as this injunction shall not affect the unencumbered value of those assets of the first defendant and the second defendant as shall jointly exceed the sum of RM459,969.41 subject always to the condition that if the first defendant and the second defendant shall have complied with the order made herein for the full payment of the sum of RM459,969.41 to the plaintiff within the time period stipulated herein then the first defendant and the second defendant shall be at liberty to set aside this Mareva injunction as contained in para 1 of this order herein.

(2) The first defendant and the second defendant shall be entitled to draw upon and expend from a bank account or other source the identity of which shall first be notified by them to the plaintiff's solicitors in the manner appearing below:

(i) As for the first defendant, an amount not exceeding RM5,000 per month for the usual business expenses and/or usual expenses;

(ii) As for the second defendant, an amount not exceeding RM5,000 per month for business expenses and/or usual expenses;

(iii) As for the first defendant, an amount not exceeding RM5,000 per month for reasonable legal expenses;

(iv) As for the second defendant, an amount not exceeding RM5,000 per month for reasonable legal expenses; and

(v) Such further amount or amounts, if any, and which are and have been agreed to in writing with the plaintiff's solicitors from time to time.

(3) The first defendant and the second defendant do forthwith disclose in writing the full value of their assets within the jurisdiction of this court identifying with full particulars such assets and their whereabouts and whether the same be held in their own names or by nominees or

otherwise on their behalf and sums standing in such accounts and such disclosures be made by affidavits affirmed by the first defendant and the second defendant and served on the plaintiff's solicitors within fourteen (14) days from date of service of this order.

(4) The first defendant and the second defendant be restrained and an injunction be granted restraining them whether by themselves, their servants or agents or any of them until the final disposal of this claim from:

(i) Entering into and remaining upon the plaintiff's place of business located at Nos 34–38, Jalan PS 1/7, Subang International Light Industrial Park, Bandar Pinggiran Subang 1, Section U5, 40150 Shah Alam or at such other places of business wherein the plaintiff conducts business;

(ii) Using, selling, concealing or handling in any manner whatsoever and howsoever the plaintiff's assets, its cheque books, records and books of accounts, the cheques received from the plaintiff's debtors and other items and things used by the plaintiff in the ordinary course of business;

(iii) Making or continuing to make any representations, actions, deeds, messages, signs, letters, or any other communications whatsoever and howsoever to the effect that the first defendant and the second defendant are duly authorized and empowered to act for and on behalf of the plaintiff;

(iv) Doing or committing any action whatsoever and howsoever such as to disrupt, interfere with, or to destroy the plaintiff's business;

(v) Doing or giving any directions and/or causing any person or persons to use and cause violence to be committed against the directors and shareholders of the plaintiff;

(vi) Receiving or collecting any cheques from the plaintiff's debtors;

(vii) Carrying on any business in the name of the plaintiff or in such other manner or style such as to cause confusion to the plaintiff's customers; and

(viii) Dealing with, directing, instructing, and/or communicating whatsoever and howsoever in any manner with any of the banks with which the plaintiff maintains accounts with.

(5) The first defendant and the second defendant whether by themselves, their servants or agents or any of them be ordered by injunction to do and/or cause to be done within fourteen days from service of this order that:

(i) To render a report and to affirm affidavits of all actions, conduct, and things done by the first defendant and the second defendant occurring since and subsequent to 20 November 1998 and to serve such affidavits to the plaintiff's solicitors within fourteen days from service of this order herein.

(6) The costs of this application to be taxed and paid by the first defendant and the second defendant to the plaintiff. A

Injunction granted.

Reported by Chin En Tek B

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